Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-186

ALFRED A. PORRO, Jr.,

Petitioner,

vs.

JOSEPH C. WOODCOCK, Jr., Bergen County Prosecutor; JAMES MAYER, Bergen County Assistant Prosecutor; BERGEN COUNTY PROSECUTOR'S OFFICE; GRAND JURY, THIRD STATED SESSION, SEPTEMBER TERM 1973; GRAND JURY SECOND STATED SESSION, SEPTEMBER TERM 1974; GRAND JURY, THIRD STATED SESSION, SEPTEMBER TERM 1974, and GRAND JURY, UNKNOWN STATED SESSION OR TERM 1975,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT OF THE UNITED STATES

October Term, 1977
No.

ALFRED A. PORRO, Jr.,

Petitioner,

vs.

JOSEPH C. WOODCOCK, Jr., Bergen County Prosecutor; JAMES MAYER, Bergen County Assistant Prosecutor; BERGEN COUNTY PROSECUTOR'S OFFICE; GRAND JURY, THIRD STATED SESSION, SEPTEMBER TERM 1973; GRAND JURY SECOND STATED SESSION, SEPTEMBER TERM 1974; GRAND JURY, THIRD STATED SESSION, SEPTEMBER TERM 1974, and GRAND JURY, UNKNOWN STATED SESSION OR TERM 1975,

Respondents.

The petitioner seeks reversal of a judgment of the Supreme Court of New Jersey dismissing an appeal of the Lower Court's ruling dismissing the Complaint for failure to state a cause of action.

THE OPINIONS BELOW

This case is a civil action for violation of Constitutional rights of the plaintiff by the defendant prosecutional officials during the conducting of a grand jury investigation. The Trial Court, The Superior Court of New Jersey, Law

Division, Bergen County, rendered an oral Opinion on October 28, 1975 dismissing the Complaint on the defendants' motion to dismiss for failure to state a cause of action. This Opinion is not officially reported, but a transcript of the same is appended to this Petition as Appendix "A." On February 25, 1977, the Superior Court of New Jersey, Appellate Division, Docket No. A-1024-75, held "that the Court below did not err in granting the motion to dismiss." Likewise, this opinion is not officially reported but a copy of the per curiam Opinion is attached hereto as Appendix "B." On May 3, 1977, the Supreme Court of New Jersey Docket No. A-1024-75, dismissed the appeal. No reason was expressed, nor is this decision officially reported. A copy of the Order of dismissal is annexed hereto as Appendix "C."

JURISDICTIONAL STATEMENT

(i) The judgment sought to be reviewed is the ruling of the Supreme Court of New Jersey of May 3, 1977 which affirmed the judgment of the Superior Court of New Jersey, Appellate Division entered on February 25, 1977, which in turn affirmed the judgment of the trial court entered on November 19, 1975.

(ii) No Petition for Rehearing was filed, nor was any request granting an extension of time within which to Petition for Certiorari.

(iii) Jurisdiction of this Petition for Certiorari is conferred on this court by Title 28 of the United States Code, section 1257 (3), 28 U.S.C. 1257 (3) and jurisdiction is further conferred upon this court by Title 42 of the United States Code, section 1983, 42 U.S.C. 1983.

QUESTIONS PRESENTED FOR REVIEW

1. Does Title 42 of the United States Code, Section 1983, 42 U.S.C. 1983 provide relief from the deprivation of substantial rights, privileges, or immunities secured by the Constitution committed by state prosecutors during the course of a grand jury investigation.

2. Do the actions of the prosecutors, including the failure to inform the petitioner that he had been indicted and concealing said indictment from him while compelling him to testify before the indicting grand jury, constitute a violation of the United States Constitution, Amendments Five and Six.

3. Does the New Jersey Supreme Court decision barring civil relief from investigative stage prosecutional action decide a federal question of substance in a way probably not in accord with applicable decisions of this Court as in *Imbler v. Pachtman*, 424 U.S. 40 (1976) and *Helstoski v. Goldstein*, U.S. Court of Appeals for the Third Circuit, Docket No. 76-956 presently before this court, October, 1976 term, Docket No. A1062.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following provisions of the United States Constitution:

> 1. Amendment V—No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of

life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. U.S. Constitution, Amendment 5.

2. Amendment VI—In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his deference. U.S. Constitution, Amendment 6.

3. Amendment XIV—Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the priviliges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Constitution, Amendment 14.

The following Federal statutory provision is involved in this case:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U.S.C. Section 1983.

STATEMENT OF THE CASE

The defendants commenced an investigation approximately three years ago of the plaintiff. This investigation extended over the term of four Grand Juries.

A Verified Complaint was filed against the defendants on September 30, 1975, setting forth numerous actions which violated substantial Constitutional rights of the plaintiff, including the Fifth, Sixth and Fourteenth Amendments; also alleged was the violation of 42 U.S.C. Section 1983. These violations consisted of illegal electronic taping of defense conversations in the law office of the plaintiff relative to defense witnesses, documents and strategy on no less than 15 occasions between June 1975 and October 1975; utilization of unauthorized subpoenas to obtain numerous records of plaintiff and invasion of plaintiff's personal and professional records; numerous Grand Jury leaks to the press; intimidation and harassment of witnesses and extensive Grand Jury abuses.

These violations also encompass the concealment of the indictment of the plaintiff while requiring him to testify extensively regarding the subject matter thereof.

Immediately after the service of the aforementioned Civil Complaint it was dismissed by the trial court by granting a motion to dismiss for failure to state a cause of action (Appendix A). This dismissal was affirmed by the Appellate Division (Appendix B) and the Supreme Court of New Jetrsey (Appendix C). The Federal questions of the violation of the constitutional rights in question and the availability of a civil remedy relative to the same were timely and properly raised so as to give this Court jurisdiction to review the State Court Judgments on Writ of Ceritorari.

All of these Constitutional violations and Federal issues were raised by way of the aforementioned civil complaint and subsequent briefs and oral arguments. In spite of the common law and the statutory provision of 42 U.S.C. Section 1983, which were raised by the Complaint and in written and oral argument before the Trial and Appellate Court and in written argument presented to the Supreme Court of New Jersey, this Complaint was dismissed for failure to allege a cause of action. None of said Courts would address these Constitutional and Federal questions.

ARGUMENT

I. Clarification of *Imbler v. Pachtman* to avoid existing conflicting Federal and State court opinions.

Since the decision of this Court in *Imbler v. Pachtman, supra,* which held that Prosecutors were absolutely immune from civil damage suits, including suits brought under 42 U.S.C. 1983, while performing quasi judicial functions in certain circumstances, a substantial degree of conflict has occurred in both the Federal and State Courts respecting the unresolved issue of lack of absolute immunity in the Prosecutor's role as an "investigative officer rather than an advocate." *Id.* 430-431. In a similar case, presently before this Court, *Helstoski v. Goldstein,* the United States Court of Appeals for the Third Circuit on March 28, 1977 held that prosecutorial activities, similar to the ones in the case at Bar, consisting of Constitutional violations in an investigative role "would lie outside the rationale for absolute immunity set forth in *Imbler.* At most, it would be subject to a qualified good faith immunity." However, in this very same circuit the New Jersey State Courts held, as in the case at Bar, that no cause of action exists.

Thus, the case at Bar, together with the *Helstoski* case presently before the Court, presents the issue which this Court did not address in the *Imbler* case. In that case this Court said:

> "We have no occasion to consider whether like or similar reasons requires immunity for those aspects of the Prosecutor's responsibility that cast him in the role of an administrator or investigative officer, rather than that of advocate. We hold only that in initiating a prosecution and in presenting the State's case, the Prosecutor is immune from a civil suit for damages under Section 1983." Id. at 430-431.

Also see the post *Imbler* cases of *Halperin v. Kissinger*, U.S. District Court for the District of Columbia, Docket No. 1187-73, decided December 8, 1976, wherein the Court, comparing the *Imbler* case, held that investigative electronic techniques which violated Constitutional rights did not warrant prosecutional immunity. Also see *Tomko v. Lees*, 416 F. Supp. 1137, 1138 (D. Pa. 1976), holding that *Imbler* does not bar civil action against a prosecuting attorney for Constitutional violations in an investigative stage of the case. Also see *Brower v. Horowitz*, 535 F.2d 830 (3rd Cir. 1976) holding that *Imbler* granted prosecutor immunity where he allegedly conspired with a witness to knowingly use false and perjured testimony in that it was not investigative activity. Also *Hedeleone v. Thomas*, 423 F. Supp. 7 (D. Neb. 1976) where the Court after granting absolute immunity to a sheriff, stated that although prosecutors enjoyed absolute immunity when they exercise judicial or quasi-judicial discretion, other State officers did not unless they acted in good faith. Also see report of Comptroller General of the United States, *Law Suits Against the Government Relating to a Bill to Amend the Privacy Act of 1974*, May 6, 1977.

Thus, it appears that the case at Bar, together with the pending *Helstoski* case, should be decided to clarify the unresolved issue in the *Imbler*, whether prosecutorial immunity extends to investigative activities as well as advocacy or quasi judicial functions.

II. The U.S. Supreme Court should decide whether 42 U.S.C. Section 1983 actions are available to persons deprived of their civil rights during a Grand Jury investigation.

The case at bar demonstrates the necessity to provide an effective Civil remedy to prevent extensive and continuing constitutional violations at the grand jury investigative

stage. Without such a remedy all of the substantial Constitutional violations complained of are implicitly sanctioned. It should be noted that although recognizing all of the actions in question as being unconstitutional, the New Jersey Courts have declared that said actions are not of the nature to justify the dismissal of an indictment. *State v. Porro*, N.J. State Indictment S-1320-75. The intervening indictment did not render the case moot. *National Land and Investment Co. v. Specter*, 428 F.2d 91 (1970). As Chief Justice Richard Hughes of the New Jersey Supreme Court made clear in condemning such grand jury leaks:

> "Danger is being done every day to the reputation of citizens presumed by every constitutional intendent at that stage to be innocent and innocent until convicted, and this kind of damage, of course, is irreversible." 97 NJ L.J. 110 (June 6, 1974) Also see Fahringer, Herald Price, the *Problem of Grand Jury Leaks, Trial*, A.T.L.A. 33 at 37 (May, 1976).

Similarly the prevention of the intrusion into the defense camp by illegal electronic surveillance is only effectively enjoined by such civil actions, particularly where the same is done intentionally. *Bursey v. Weatherford*, 45 L.W. 4154 (1977); Also see *Halperin v. Kissinger, supra; Wright v. State of Florida*, 49 F.2d 1086 (5th Cir. 1974); also see *Roach v. Harper*, 105 S.E. 2d 564 (W. Va. 1956); *Billings v. Atkinson*, 489 S.W. 2d 858 (Tex. 1973) and *Zweibson v. Mitchell*, 516 F.2d 594 (D.C. Cir. 1975); *Abramsen v. Mitchell*, 459 F.2d 955 (8th Cir. 1972); *also see Roach.*

The intrusion into the defense camp, in this matter, violates substantial constitutional rights. *United States v. Rispo*, 460 F.2d 965 (3rd Cir. 1972); *Caldwell v. United States*, 205 F.2d 879 (D.C. Cir. 1953), *cert. den.* 349 U.S. 930, *reh. den.* 349 U.S. 969 (1955); *Coplan v. United*

States, 191 F.2d 749 (D.C. Cir. Ct. 1950). It is particularly noted that the prosecution, even through a third party, cannot "with impunity place a secret agent in a lawyer's office to inspect the confidential papers of the defendant and his advisors, to listen to their conversations and to participate in their counsels of defense," *State v. Cory*, 62 Wash. 2d 371, 392 P.2d 1019, 5 A.L.R. 3d 1352 (1963). "What was learned by the agents would be of help to them in structuring an answer to the affirmative defense they anticipated and knowledge on the part of the agents of defense plans and strategy is all I think is necessary to require dismissal." *United States v. Orman*, 417 Fed. Supp. 1126 at 1136 (D.C. Colo. 1976). This is exactly what occurred in the case at bar. A simple remedy is essential.

Likewise, the extensive practice of the abuse of the grand jury subpoena power by prosecutors issuing unauthorized subpoenas, while the grand jury is not in session, "for the purpose of conducting his own inquisition is clearly unconstitutional but left without the availability of a civil action." *Durbin v. United States*, 221 F.2d 520 (D.C. Cir. 1954), *United States v. Miller*, 500 F.2d 771 (1974).

Most shocking is the prosecutional investigative practice of indicting a defendant, bringing him before a grand jury, concealing the indictment, and misrepresenting to him that he is a "target" and not a defendant. Thereafter proceeding to take extensive testimony relative to the subject matter of the indictment. The New Jersey court has deemed such a practice as shocking but an insufficient basis to discharge an indictment. The Sixth Circuit has compared this practice to the "Star Chamber of the Eighteenth Century, an institution which helped produce the American Revolution." It stated that " • • • the proceeding is an abuse of the process and violates both the Sixth and the due process clause of the Fifth Amendment."

United States v. Doss, U.S. Court of Appeals 6th Cir., and decided on December, 1976. The cumulative actions of the prosecutors' offices in abusing the grand jury process constitutes a clear violation of the due process right to a fair and impartial grand jury proceeding. *Beck v. Washington*, 369 U.S. 541, 8 L.Ed. 2d 98, 82 S. Ct. 955, *reh. den.* 370 U.S. 965, 8 L.Ed. 2d 834, 82 S. Ct. 1572 (1962). In the case at Bar, a defendant is left without any effective remedy, if complaints, primarily for injunctive relief can be systematically dismissed on an alleged failure to state a cause of action. The position of the New Jersey State Courts in this case demonstrate the complete immunity of State Prosecutor's from civil action. Thus, without clarification of the status of civil remedies respecting unconstitutional investigative actions of prosecutors a substantial miscarriage of justice is occurring. Without such a remedial avenue there is no effective sanction of these extensive and growing investigative improper and unconstitutional actions.

APPENDIX "A"

ORDER AND OPINION, NEW JERSEY SUPREME COURT, LAW DIVISION

(Filed November 19, 1975)

This matter having been heard by the Court on the return day of an order directing defendants Woodcock, et al., to show cause why the relief sought by Plaintiff in his complaint should not be granted, and the State having moved to dismiss the complaint for failure to state a claim upon which relief can be granted, and the Court having considered the affidavits and briefs filed on behalf of the respective parties, and the Court having heard and considered the arguments of counsel, and it appearing to the Court that the State of New Jersey is entitled to the relief requested, and the Court having rendered an oral opinion setting forth findings of fact and conclusions of law which are hereby incorporated by reference, and good cause appearing;

Now therefore, on this 19th day of November, 1975,

IT IS ORDERED that Count One of the Complaint be dismissed for failure to state a claim upon which relief can be granted, without prejudice to the right of the Plaintiff to pursue his appropriate legal remedies at the appropriate time; and

IT IS FURTHER ORDERED that Count Two of the Complaint be dismissed for failure to state a claim upon which relief can be granted, and for the fact that Count Two alleges no interference with the legal rights of the named Plaintiff, without prejudice to the right of the Plaintiff or Ann Gibson to pursue the appropriate legal remedies at the appropriate time.

/s/ Theodore W. Trautwein
THEODORE TRAUTWEIN, J.S.C.

A copy of this order to be served on
adversary's attorney within 5 days

OPINION OF
THEODORE W. TRAUTWEIN, AJSC.

This Court having considered the briefs and affidavits submitted by respective Counsel and having heard all arguments relative to this matter on the 9th of October 1975, concludes as follows:

The first issue to be decided today is whether the first count of the verified complaint must be dismissed for failure to state a claim upon which relief may be granted. The Court concludes that said count must be dismissed without prejudice to the right of plaintiff to raise the same issues at a later date in the event an indictment should issue against him. Plaintiff requests this Court to grant injunctive relief by issuance of a writ of prohibition. The grant of a writ of prohibition lies within the sound discretion of the Court to be exercised with great caution and forebearance, according to the circumstances of the particular case and only where the right to such relief is clear. 73 Corpus Juris Secundum Section 5. A writ of prohibition ordinarily will not be granted if there are other remedies at law which would afford complete and adequate relief.

The guidelines to be followed by the Court in determining whether or not interlocutory injunctive relief should issue have been well documented in the *Citizens Coach Company vs. Camden Horse Railroad Company*, 29 New Jersey Equity 299 (Court of Error and Appeals 1878). Therein at page 303, *et seq.* the Chief Justice of the Court of Errors and Appeals postulated the following three legal rules to guide our Courts in weighing the propriety of injunctive relief;

1. A preliminary injunction will never be ordered unless from the pressure of an urgent necessity. The damage

threatened to be done, and which it is legitimate to prevent, must be, in an equitable point of view, of an irreparable character.

2. A complainant is not in a position to ask for a preliminary injunction when the right on which he founds his claim is, as a matter of law, unsettled.

3. If the facts constituting the complaint of the complainant for the immediate interposition of the Court are controverted under oath by the defendant, the Court will not interfere at the initial stage of the cause.

In the instant case plaintiff alleges that he has suffered and will continue to suffer irreparable harm personally and professionally if the investigation is not halted at this juncture. Grand Juries have traditionally been afforded great latitude in the scope of their investigations. Inquiries directed at public bodies, such as the East Rutherford Sewerage Authority, are clearly matters of public import related to the public welfare and of ultimate benefit to the community served by the Grand Jury. The tangential public embarrassment and humiliation of an individual doing business with a public body under investigation does not rise to that level of irreparability of harm sufficient to invoke the injunctive power of this Court. Moreover, the legal right on which plaintiff grounds his claim is, as a matter of law, unsettled. The Court, after diligent inquiry, is unaware of any case in which a Grand Jury investigation was halted at the pre-indictment phase and any "planned" indictment enjoined. The plaintiff herein has adequate remedies at law in the event an indictment should issue against him. Plaintiff may move to quash the indictment, sue for actual and punitive damages for illegal wiretapping pursuant to N.J.S.A. 2A:156A-24, or bring a suit sounding in tort against the above named defendants. Moreover, if the

pre-trial publicity in the instant matter has so permeated the community so as to prejudice plaintiff's right to a fair trial, plaintiff may move for a change of venue or alternatively, may request that individual jurors so prejudiced be excused on *voir dire*. Therefore, this Court concludes that the issuance of injunctive relief at this stage of the proceedings would constitute an infringement of the legal rules postulated by the Court of Errors and Appeals in *Citizens Coach Company vs. Camden Horse Railroad Company* and, moreover, would result in a serious invasion of the secrecy of Grand Jury proceedings.

The rationale of this Court is equally applicable to the second count of the verified complaint insofar as the relief requested in the first count of the complaint. However, the Court will take this opportunity to comment on plaintiff's request that further harassment of Ann Gibson be enjoined and that the Grand Jury be discharged relative to the alleged invalid investigation of Ann Gibson. It is axiomatic that an injunction will not be granted to restrain acts that occasion no injury to the complainant. The basis for injunctive relief must be interference with a legal right of the plaintiff, not of a third party. The complainant, Alfred Porro herein, cannot succeed because Ann Gibson may be injured. 42 Am Jur Second, Section 29, page 765. Therefore, the second count of the verified complaint is similarly dismissed without prejudice to the right of plaintiff or Ann Gibson from pursuing their legal and equitable remedies in the event an indictment should issue against either or both of them.

At this time the Court refrains from addressing the merits of the motions brought by Ann Gibson returnable October 31, 1975, to wit: The challenge to the array of Grand Jurors relative to all the defendants Grand Juries, the motion to have all pleadings, documents, and proceedings impounded, sealed and heard *in camera*, the demand for a bill of particulars, the request to interview Grand Jurors, the motion to dismiss the indictment, the motion to suppress illegally obtained evidence, and finally the request for discovery, other than to make a few observations in a few minutes about State vs. Gibson.

The order to show cause is, therefore, discharged, dismissed, and the complaint dismissed without prejudice. Submit order in accordance with this decision. You may incorporate the Court's findings by reference as set forth in its oral opinion either under the five day rule, or with the consent attached.

Now, it should be noted that there have been no answering affidavits filed in this matter by the Prosecutor's Office for obvious reasons. This would destroy the secrecy of the Grand Jury proceedings which at least until today in this matter are still inviolate, but the Court must make this observation that merely from oral argument, when it was heard *in camera* on October 9, there were certain statements made by the Assistant Prosecutor, who argued this cause, that demonstrated to the Court that there could have been substantial fact conflicts developed in this case, which is simply another reason under the *Camden Coach* case why preliminary or interlocutory injunctive relief should not be granted.

Now, with respect to *State vs. Gibzson*, there are motions returnable on Friday October 31. I will set them down for two o'clock. However, I would like to hear from both the Prosecutor and Mr. Porro as to why this matter as far as *State vs. Gibson* should continue *in camera*. I believe it is in that posture now—maybe I should hear Mr. Porro first.

MR. PORRO: Your Honor, I would like to request that your Honor postpone those motions and I think that

will avoid the necessity of it being *in camera*, namely it appears as if the Prosecutor's Office is going to move relative to myself before this week is out, or the early part of next week, in which event—

THE COURT: What does that mean "move?"

MR. PORRO: Well, according to what they said in open Court they said they . . .

APPENDIX "B"

OPINION
NEW JERSEY SUPERIOR COURT, APPELLATE DIVISION

Argued February 9, 1977; Decided February 25, 1977.

Before Judges Lora, Crane and Michels.

On appeal from Superior Court, Law Division, Bergen County.

Mr. Alfred A. Porro, Jr., argued pro se.

Mr. Marcel R. Plaut, Deputy Attorney General, argued on behalf of respondents (Mr. William F. Hyland, Attorney General, attorney).

PER CURIAM

The plaintiff Alfred A. Porro, Jr. brought an action in the Law Division alleging that the defendant prosecutor and assistant prosecutor were conducting a Grand Jury investigation of his business and professional affairs in a manner which infringed upon his constitutional rights. The essential relief sought in the complaint was the injunction of the return of an indictment against him; the delivery to him of all Grand Jury minutes, statements, testimony and records; the injunction of further harassment; the disqualification of the prosecutor and his staff from any further investigation of the plaintiff; the appointment of an independent counsel to review the actions of the prosecutor and the discharge of the Grand Jury.

On motion of the defendant prosecutor, the court below dismissed plaintiff's complaint on the ground that irreparable harm was not shown and that plaintiff could move for relief in the criminal proceedings if an indictment

were to be returned. Subsequently the Grand Jury did return an indictment against the plaintiff. He appeals.

The return of the indictment against the plaintiff has rendered substantially all of the issues raised by plaintiff moot. *Alboum v. City of Newark*, 22 *N.J.* 571 (1956). Nevertheless, since it is theoretically possible to grant some of the relief sought by plaintiff in this complaint, we have considered the appeal on its merits. See *National Land & Investment Company v. Specter*, 428 *F.* 2d 91, 94 (3 Cir. 1970).

Our careful review of the record persuades us that the court below did not err in granting the motion to dismiss. The judgment is affirmed for the reasons expressed in the oral opinion of Judge Trautwein delivered on October 28, 1975. See *Eleuteri v. Richman*, 47 *N.J. Super.* 1, 26 (App. Div. 1957), aff'd. 26 *N.J.* 506 (1958), *cert.* den. 358 *U.S.* 843 (1958); *Moresh v. O'Regan*, 122 *N.J. Eq.* 388 (E. & A. 1937); 4 *Pomeroy, Equity Jurisprudence* (5th Ed. 1941) §1361(b) at 978.

A TRUE COPY

Elizabeth McLaughlin
Clerk

APPENDIX "C"
NEW JERSEY SUPREME COURT ORDER
(Filed May 3, 1977)

This matter having been duly presented to the Court, it is ORDERED that the motion to dismiss appeal is granted.

WITNESS, the Honorable Richard J. Hughes, Chief Justice, at Trenton, this 3rd day of May, 1977.

/s/ Florence R. Peshoe
FLORENCE R. PESHOE
Clerk

A TRUE COPY
Florence R. Peshoe
Clerk